

EXHIBIT D

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA
3

4 IN RE: PROCESSED EGG PRODUCTS: MDL NO. 2002
5 ANTITRUST LITIGATION 08-MDL-02002
6

7 - - - - -
8 PHILADELPHIA, PA
9

10 - - - - -
11 DECEMBER 5, 2019
12

13 BEFORE: THE HONORABLE GENE E.K. PRATTER, J.
14

15 - - - - -
16 TRANSCRIPT OF TRIAL PROCEEDINGS
17 DAY 21
18 - - - - -
19

20
21 KATHLEEN FELDMAN, CSR, CRR, RPR, CM
22 Official Court Reporter
23 Room 1234 - U.S. Courthouse
24 601 Market Street
25 Philadelphia, PA 19106
 (215) 779-5578

(Transcript Produced By Mechanical Shorthand Via C.A.T.)

1 effective in 2015, for example, which was the case with the
2 California cage space law, California Prop 8, well, 2015 minus
3 30 years is 1985. So what that law means is that if you were
4 to put a cage in, a new cage in at any point after 1985, you
5 could expect that part of the useful life of that cage would
6 be legislated away, because you'd still have a cage in 2015
7 that had some useful life in it but you wouldn't be able to
8 use it. So if you designed a facility that's based upon, you
9 know, 40 square inches or whatever, or some other number and
10 you design that facility and you're thinking of expanding in
11 2009 or 2010, you'd better take into account that by 2015,
12 which is just a few years away, you're going to have to be
13 compliant with California's Proposition 8 and the companion
14 bill passed in 2010, or else you can't sell from that facility
15 into California.

16 So immediately you would expect there to be an
17 impact on the investment decisions by producers, because this
18 equipment lasts for a lot more than that gap. I mean, that's
19 presumably why there is a delay between the passage of the law
20 and enactment of the law in the first place. It's to allow
21 for a period of time for producers to revamp their production
22 in such a way that there's no disruption so that by the time
23 you get to 2015, there's no disruption in the market when
24 everybody has to be compliant.

25 Q. And would that be the same for the statutes in Arizona,

1 Oregon, Washington, Massachusetts, Michigan, Ohio, New Jersey?

2 A. Oh, yes and no. The no part is Arizona is 2009. You
3 know, Arizona is not even in the future. Arizona was, you
4 know, immediate. And the same, in part, with Ohio. Ohio was
5 in 2010. You know, no more -- no more cages.

6 But certainly for any of the other states, you know,
7 the question is, if you take the year of passage, is it 30
8 years away when it's going to become effective? Well, in that
9 case, yeah, probably not going to be much of an impact. But
10 if you're talking about a law that was passed in, say, 2012,
11 well, if the law becomes effective before, say, 2042, then
12 there's some potential for that fact to have an impact on
13 behavior immediately and to affect the way that producers
14 invest from that point forward.

15 Q. And did you see anything in the documentary record or
16 here at trial that would actually bear out that that's the way
17 producers actually view things and, you know, conduct their
18 expansion investment decisions?

19 A. Yes, both.

20 Q. Okay. Can you tell us what you've seen?

21 A. Sure. In the documentary record, Moark, for example, had
22 been planning a new cage facility in California a couple
23 million birds in 2008. And there's memos in which they talk
24 about it. Immediately upon passage of 2008, there are other
25 memos that say let's not build that two-million cage facility

1 in California given the passage of Proposition 8, we don't
2 think California is a very friendly environment for cage
3 production anymore. And so they scuttled a multimillion hen
4 facility immediately after passage of Proposition 8. And the
5 memos say, in part, the reason for it was the passage of the
6 law.

7 Q. And you said there were a couple of examples. Any
8 others?

9 A. Yeah, Mr. Rust, Marcus Rust testified here that Rose
10 Acre, four or five years ago, I think he testified, stopped
11 investing in cage facilities because they think in 2023 or
12 2025, all of their purchasers are going to go cage free. So
13 Rose Acre testified in this litigation here at trial that four
14 or five years ago, they started changing their production
15 practices in anticipation of an event that's going to happen
16 three or four years from today. So -- or five actually, I
17 think it's in 2023 to 2025. So four years ago. It's 2019
18 now, we're talking about 2014 to 2025 is 11 years. It's a
19 long time. It's a lot more than the difference in time
20 between passage of Proposition 8 and the time Proposition 8
21 was going to be effective.

22 Q. Now, are there any other issues that you think were going
23 on from August 2002 and on, that were not present in the
24 benchmark period?

25 A. Yeah. One of the big ones, which we've talked about and